

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

MICHAEL ESPINOSA,
Plaintiff,

v.

STEVENS TANKER DIVISION, LLC,
Defendant.

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CIVIL ACTION NO. 5:15-CV-879-XR

**PLAINTIFFS' OPPOSED MOTION TO QUASH, FOR PROTECTIVE ORDER AND
OBJECTIONS TO DEFENDANT'S NOTICE FOR ORAL DEPOSITIONS OF
MICHELLE McDOUGAL, KRYSTYNN McCaffrey, CARLY POWELL AND MARK
MURRAY**

Now comes Plaintiffs in the above-styled and numbered cause and files this his Motion to Quash, For Protective Order and Objections to Defendant's Notice of Intention to take the Oral Deposition of Plaintiffs Michelle McDougal, Krystynn McCaffrey, Carly Powell and Mark Murray noticed for Friday, April 28, 2017, in the above matter, and for cause would respectfully show unto the Court the following:

OVERVIEW

Defendant did not confer on agreeable date or time; scheduled the depositions on a date that conflicts with previously scheduled depositions; the deponents include one who will be opting out, Plaintiff is unable to schedule the depositions on such short notice and Plaintiff's Motion for Decertification is pending.

**DECERTIFICATION MUTES DEPOSITIONS OF OPT-INS
IN PLAINTIFF ESPINOSA'S LAWSUIT**

Plaintiff's Motion to Decertify Conditional Class was filed on March 21, 2017. Plaintiff filed the Decertification Motion because discovery had shown that Plaintiff and opt-in plaintiffs are not similar for class purposes and opt-in plaintiffs worked under different conditions than Plaintiff Espinosa. (DE 91).

**DEFENDANT DID NOT CONFER WITH PLAINTIFF'S COUNSEL PRIOR TO
SCHEDULING THESE DEPOSITIONS**

Defendant was aware on March 29, 2017, that the Court was not extending the discovery deadline past May 1, 2017. (The Court's text order denying Plaintiff's request to extend discovery deadline past May 1, 2017).

April 5, 2017: Plaintiff gave Defendant notice that the depositions of Ayala and Moore would take place in Plaintiff's Counsel on April 28, 2017. (Ex.1)

April 20, 2017, Defendant sent the Notice of Intention to Take the Oral Depositions of four opt-in plaintiffs without consulting with Plaintiff's counsel as to scheduling or availability on April 28, 2017.

**DEFENDANT'S NOTICES FOR APRIL 28, 2017, CONFLICT WITH PREVIOUSLY
SCHEDULED DEPOSITIONS SUBPOENAED FOR APRIL 28, 2017.**

APRIL 8 AND 10, 2017: PLAINTIFF SUBPOENAED TWO FORMER EMPLOYEES
TO BE DEPOSED ON APRIL 28, 2017

Plaintiff Espinosa had two dispatch supervisors: Hilton Ayala and Barbara Moore. Plaintiff had requested whether Defendant would make these witnesses available; Defendant did not; and Plaintiff was required to issue subpoenas.

March 29, 2017: The Court's text order denied Plaintiff's request to extend discovery deadline past May 1, 2017.

April 5, 2017: Plaintiff issued Defendant notice that the depositions of Ayala and Moore would take place in Plaintiff's Counsel on April 28, 2017. (Ex,1)

April 8, 2017: Plaintiff subpoenaed Barbara Moore ordering Moore to appear for deposing in Plaintiff's counsel's office on April 28, 2017, beginning at 1:00 p.m..(Ex. 3)

April 10, 2017: Plaintiff subpoenaed Hilton Ayala ordering Ayala to appear for deposing in Plaintiff's counsel's office on April 28, 2017, beginning at 10:00 a.m. (Ex. 2)

MICHELLE McDOUGAL

Counsel is waiting on an opt-out form from Ms.McDougal. Additionally,

LENGTH OF DEPOSITIONS

Defendant has noticed 4 depositions to be taken on 1 day. This is not reasonable.

Defendant has previous depositions:

- a. Plaintiff Espinosa lasted from 10:28 am to 5:22 p.m. (Ex. 4)
- b. Louis Willis lasted from 10:23 a.m. to 4:09 p.m. (Ex. 5)

Based on the above, Plaintiffs hereby file their Motion to Quash and request for protective order and objections thereto.

2.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Court grant Plaintiffs Motion to Quash, For Protective Order and/or sustain their objections. Plaintiffs further pray for all other relief as Plaintiffs may show themselves justly entitled.

Respectfully Submitted,

BY: /s/ Adam Poncio
ADAM PONCIO
State Bar No. 16109800

PONCIO LAW OFFICES
A Professional Corporation
5410 Fredericksburg Road, Suite 109
San Antonio, Texas 78229-3550
Telephone: (210) 212-7979
Facsimile: (210) 212-5880

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of April, 2017, I electronically filed the foregoing with the Clerk of the Court using CM/ECF system and served on the following interested parties:

Stephen C. Key
John L. Freeman
3710 Rawlins Street, Suite 950
Dallas, Tx 75219
(214) 615-7929 (Key Telephone)
(214) 615-7923 (Freeman Telephone)
(214) 615-7926 Facsimile

/s/ Adam Poncio

ADAM PONCIO

Exhibit 1

Angela Maldonado

From: Angela Maldonado <amaldonado@ponciolaw.com>
Sent: Wednesday, April 05, 2017 1:54 PM
To: skey@keyharrington.com; jfreeman@keyharrington.com
Cc: 'Chris McJunkin'; 'Adam Poncio'; 'Misty Eubanks'
Subject: RE: Activity in Case 5:15-cv-00879-XR Michael Espinosa v. Stevens Tanker Division. LLC Order on Motion for Miscellaneous Relief

All,

Please note that the deposition notices for Ayala and Moore will be set for April 28, 2017 in our offices.

Sincerely,

Angela Maldonado

Poncio Law Offices
A Professional Corporation
5410 Fredericksburg Rd., Suite 109
San Antonio, TX 78229
(210) 212-7979 Telephone
(210) 212-5880 Facsimile

From: Adam Poncio [mailto:SALAW@msn.com]
Sent: Wednesday, April 05, 2017 8:02 AM
To: skey@keyharrington.com; jfreeman@keyharrington.com
Cc: Chris McJunkin <cmcjunkin@stx.rr.com>; Angela Maldonado <amaldonado@ponciolaw.com>; Misty Eubanks <meubanks@keyharrington.com>
Subject: Fw: Activity in Case 5:15-cv-00879-XR Michael Espinosa v. Stevens Tanker Division. LLC Order on Motion for Miscellaneous Relief

As provided in the Court's 3/29/17 order set out below, I am attaching the 30(b)(6) depo notice and set for 5/1/17 and the notice for William Hayes set for 3/27. I will be re-noticing Ayala and Moore for 3/28 at our offices.

Adam Poncio
Board Certified-Labor and Employment Law
Board Certified-Civil Appellate Law
Texas Board of Legal Specialization

PONCIO LAW OFFICES
A Professional Corporation
5410 Fredericksburg Rd., Suite 109
San Antonio, Texas 78229-3550

(210) 212-7979 Telephone
(210) 212-5880 Facsimile

From: TXW USDC Notice@txwd.uscourts.gov <TXW USDC Notice@txwd.uscourts.gov>
Sent: Wednesday, March 29, 2017 3:35 PM
To: cmecf_notices@txwd.uscourts.gov
Subject: Activity in Case 5:15-cv-00879-XR Michael Espinosa v. Stevens Tanker Division. LLC Order on Motion for Miscellaneous Relief

This is an automatic e-mail message generated by the CM/ECF system. Please **DO NOT RESPOND** to this e-mail because the mail box is unattended.

*****NOTE TO PUBLIC ACCESS USERS***** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy of each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.

U.S. District Court [LIVE]
Western District of Texas

Notice of Electronic Filing

The following transaction was entered on 3/29/2017 at 3:35 PM CDT and filed on 3/29/2017

Case Name: Michael Espinosa v. Stevens Tanker Division. LLC

Case Number: 5:15-cv-00879-XR

Filer:

Document Number: No document attached

Docket Text:

Text Order GRANTING IN PART [90] Motion to Set Deadline and Compel entered by Judge Xavier Rodriguez. As to Plaintiffs request for production, Defendant is to produce all responsive documents relating to the remaining opt-in plaintiffs by April 4, 2017. As to Plaintiffs request that Defendant provide deposition dates for the witnesses identified at the February 27 hearing, Plaintiffs are authorized to notice depositions of these witnesses on a date convenient for Plaintiffs counsel if Defendant does not provide dates by April 4, 2017. Plaintiffs request for an extension of the discovery period is DENIED. (This is a text-only entry generated by the court. There is no document associated with this entry.) (pp)

5:15-cv-00879-XR Notice has been electronically mailed to:

Adam Poncio salaw@msn.com, amaldonado@ponciolaw.com, vsturgis@ponciolaw.com

Christopher Edwin McJunkin cmcjunkin@stx.rr.com

John L. Freeman jfreeman@keyharrington.com, meubanks@keyharrington.com

Stephen C. Key skey@keyharrington.com, kporter@keyharrington.com, meubanks@keyharrington.com

5:15-cv-00879-XR Notice has been delivered by other means to:

Exhibit 2

UNITED STATES DISTRICT COURT

for the

Western District of Texas

MICHAEL ESPINOSA,

Plaintiff

v.

STEVENS TANKER DIVISION, LLC,

Defendant

Civil Action No. 5:15-CV-00879-XR

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

HILTON AYALA

(Name of person to whom this subpoena is directed)

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: 5410 Fredricksburg Rd., Suite 109
San Antonio, Texas 78229

Date and Time:

04/28/2017 10:00 am

The deposition will be recorded by this method: Court reporter and possibly videographer

☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 04/05/2017

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)*

Michael Espinosa

, who issues or requests this subpoena, are:

Adam Poncio, 5410 Fredricksburg Rd., Suite 109, San Antonio, Texas 78229 (210) 212-7979 salaw@msn.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 5:15-CV-00879-XR

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for (name of individual and title, if any) Hilton Ayala
on (date) 4-5-17.

☒ I served the subpoena by delivering a copy to the named individual as follows: Hilton Ayala

_____ on (date) 4-10-17; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: 4-10-17

WC

Server's signature

MARIO V. CORTOVA SCH 2353 Exp 12-31-18
Printed name and title

3658 Candlehead Ln, San Antonio TX 78244
Server's address

Additional information regarding attempted service, etc.:

Exhibit 3

UNITED STATES DISTRICT COURT

for the

Western District of Texas

MICHAEL ESPINOSA,

Plaintiff

v.

STEVENS TANKER DIVISION, LLC,

Defendant

Civil Action No. 5:15-CV-00879-XR

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To:

BARBARA MOORE

(Name of person to whom this subpoena is directed)

☒ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place: 5410 Fredricksburg Rd., Suite 109
San Antonio, Texas 78229

Date and Time:

04/28/2017 1:00 pm

The deposition will be recorded by this method: Court reporter and possibly videographer

☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 04/05/2017

CLERK OF COURT

OR



Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)*

Michael Espinosa

, who issues or requests this subpoena, are:

Adam Poncio, 5410 Fredricksburg Rd., Suite 109, San Antonio, Texas 78229 (210) 212-7979 salaw@msn.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 5:15-CV-00879-XR

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for (name of individual and title, if any) Barbara Moore
on (date) 4-5-17.

☒ I served the subpoena by delivering a copy to the named individual as follows: Barbara Moore

_____ on (date) 4-8-17 ; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: 4-8-17

MC

Server's signature

MARIO V. Cordova SCH2353 Exp 12-31-18

Printed name and title

3458 Candlehead Ln. San Antonio TX 78244

Server's address

Additional information regarding attempted service, etc.:

Exhibit 4

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF TEXAS
3 SAN ANTONIO DIVISION
4 MICHAEL ESPINOSA §
5 Plaintiff, §
6 v. § Civil Action No. 5:15-cv-879
7 STEVENS TANKER DIVISION, LLC, §
8 Defendant. §
9 *****
10 ORAL DEPOSITION OF
11 MICHAEL ESPINOSA
12 OCTOBER 07, 2016
13 VOLUME 1 OF 1
14 *****
15 ORAL DEPOSITION OF MICHAEL ESPINOSA, produced as
16 a witness at the instance of Stevens Tanker Division,
17 represented by Stephen Key of Key, Harrington, Barnes, and
18 duly sworn, was taken in the above-styled and numbered
19 cause on the 7th day of October, 2016, from 10:23 a.m. to
20 4:09 p.m., before Sarah Murphy, CSR in and for the State
21 of Texas, reported by machine shorthand, at the Poncio Law
22 Offices, 5410 Fredericksburg Road, Suite 109, San Antonio,
23 Texas 78229, pursuant to the Federal Rules of Civil and
24 the provisions stated on the record or attached hereto.
25

Page 2

1 APPEARANCES
2 FOR MICHAEL ESPINOSA:
3
4 MR. STEPHEN C. KEY
5 KEY HARRINGTON BARNES, P.C.
6 3710 Rawlins Street, Suite 950
7 Dallas, Texas 75219
8 Telephone: (214) 615-7929
9 Fax: (214) 615-7926
10 Email: skey@keyharrington.com
11
12 FOR STEVENS TANKER DIVISION, LLC:
13 MR. ADAM PONCIO
14 MR. THOMAS N. CAMMACK, III
15 PONCIO LAW OFFICES
16 5410 Fredericksburg Road, Suite 109
17 San Antonio, Texas 78229-3550
18 Telephone: (210) 212-7979
19 Fax: (210) 212-5880
20 Email: salaw@msn.com
21
22 ALSO PRESENT:
23 MR. BRUCE DEAN, OBSERVER FOR STEVENS TANKER DIVISION
24 MS. SARAH MURPHY, TEXAS CERTIFIED SHORTHAND REPORTER
25

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7 Reporter's Certificate.....	184	
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13 Exhibit 3	Letter for Sabrina Watts	43
14 Exhibit 4	July 21, 2014 e-mail	46
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17 Exhibit 7	May 16, 2014 e-mail	71
18 Exhibit 8	July 23, 2014 e-mail	81
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21 Exhibit 11	August 23, 2014 e-mail	100
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Ex 4

Exhibit 5

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF TEXAS
3 SAN ANTONIO DIVISION

4 MICHAEL ESPINOSA,)
5 Plaintiff,)

6 V.) Civil Action
7) No. 5:15-cv-879

8 STEVENS TANKER DIVISION, LLC,)
9 Defendant.)

10 *****

11 THE ORAL DEPOSITION OF

12 LOUIS WILLIS

13 FEBRUARY 20, 2017

14 *****

15 THE ORAL DEPOSITION of LOUIS WILLIS,

16 produced as a witness at the instance of the

17 Defendant, and duly sworn, was taken in the

18 above-styled and numbered cause on the 20th day of

19 February, 2017, from 10:28 a.m. to 5:22 p.m., before

20 TERRY L. LOCHTE, Certified Court Reporter in and for

21 the State of Texas, reported by stenographic and

22 computer-aided transcription, at the PONCIO LAW

23 OFFICES, 5410 Fredericksburg Road, Suite 109,

24 San Antonio, Texas 78229-3550, pursuant to the

25 Federal Rules of Civil Procedure, and the provisions

stated on the record attached hereto.

Page 2

1 S-T-I-P-U-L-A-T-I-O-N-S

2 It is stipulated and agreed by and
3 between counsel for the respective parties hereto
4 that the original transcript of the deposition of
5 LOUIS WILLIS shall be sent to ADAM PONCIO, attorney
6 for the plaintiff, for the purpose of obtaining the
7 signature of the witness thereon before any notary
8 public.
9

10 -oOo-

Page 2

Page 3

1 A-P-P-E-A-R-A-N-C-E-S:

2 FOR PLAINTIFF LOUIS WILLIS:

3 CHRISTOPHER MCJUNKIN
4 LAW OFFICE OF CHRISTOPHER MCJUNKIN
5 2842 Lawnview
6 Corpus Christi, Texas 78404
7 PHONE: (361) 882-5747
8 FAX: (361) 882-8926
9 E-MAIL: cmcjunkin@stx.rr.com

10 FOR DEFENDANT STEVENS TANKER DIVISION, LLC:

11 STEPHEN C. KEY
12 KEY HARRINGTON BARNES, PC
13 3710 Rawlins Street, Suite 950
14 Dallas, Texas 75219
15 PHONE: (214) 615-7929
16 FAX: (214) 615-7926
17 E-MAIL: skey@keyharrington.com

18 ALSO PRESENT:

19 LOUIS WILLIS,
20 The Witness; and

21 TERRY L. LOCHTE,
22 Certified Court Reporter.

Page 4

1 I-N-D-E-X

2 THE WITNESS:

3 LOUIS WILLIS

4 PAGE

5 Stipulations 2

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9 Examination by Mr. Key 7

10 Examination by Mr. McJunkin 185

11 Examination by Mr. Key 217

12 Examination by Mr. McJunkin 227

13 Examination by Mr. Key 228

14 Witness Signature Page 233

15 Reporter's Jurat 234

16 E-X-H-I-B-I-T I-N-D-E-X

17 EXHIBIT

18 NO.

19 DESCRIPTION

20 PAGE

21 Exhibit 1 E-Mail Correspondence, 8
22 TD-E 002822

23 Exhibit 2 E-Mail Correspondence, 25
24 TD-E 002781

25 Exhibit 3 E-Mail Correspondence, 59
26 TD-E 002782-002783

27 Exhibit 4 E-Mail Correspondence, 64
28 TD-E 002824

Ex 5

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

MICHAEL ESPINOSA,
Plaintiff,

v.

STEVENS TANKER DIVISION, LLC,
Defendant.

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CIVIL ACTION NO. 5:15-CV-879-XR

**ORDER ON PLAINTIFFS' OPPOSED MOTION TO QUASH, FOR PROTECTIVE
ORDER AND OBJECTIONS TO DEFENDANT'S NOTICE FOR ORAL DEPOSITIONS
OF MICHELLE McDOUGAL, KRYSTYNN McCaffrey, CARLY POWELL AND
MARK MURRAY**

The matter before the Court is Plaintiffs' Motion to Quash, For Protective Order and Objections to Defendant's Notice of Intention to take the Oral Deposition of Opt-In Plaintiffs Michelle McDougal, Krystynn McCaffrey, Carly Powell and Mark Murray. Having considered the motion and the status of this case, the Court is of the opinion that the motion should be GRANTED.

IT IS THEREFORE ORDERED that Plaintiffs' Motion to Quash, For Protective Order and Objections to Defendant's Notice of Intention to take the Oral Deposition of Michelle McDougal, Krystynn McCaffrey, Carly Powell and Mark Murray is hereby GRANTED.

Signed this ____ day of April, 2017

XAVIER RODRIGUEZ
Honorable United States District Judge